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S E C R E T SECTION 01 OF 02 BAGHDAD 002985

SIPDIS

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TAGS: [PGOV](#) [PHUM](#) [KJUS](#) [PREL](#) [XF](#) [IZ](#)

SUBJECT: EXECUTIVE PRESSURE ON IRAQI SPECIAL TRIBUNAL  
INTENSIFIES

REF: BAGHDAD 2395

Classified By: Charge d' Affaires David M. Satterfield for Reasons 1.4  
(b) and (d)

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SUMMARY  
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1. (S) Political pressure on the judges of the Iraqi Special Tribunal (IST) heightened recently with the attempt - quashed for now - of Deputy Prime Minister Ahmed Chalabi's supporters on the De-Ba'athification Committee to remove thirteen IST judges. The referral of the IST's first criminal case on June 17th (reported septel) may ease pressure on the IST from the Prime Minister's office, which has complained repeatedly about delays, but the intensely politicized atmosphere surrounding the court's operations is unlikely to dissipate soon.

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DE-BA'ATHIFICATION AT THE IST  
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2. (S) On June 10th, the Regime Crimes Liaison Office (RCLO) was notified by an advisor with close contacts in the office of Deputy Prime Minister Ahmed Chalabi that the National De-Ba'athification Committee had drafted a letter demanding the removal of thirteen of the fifty-four judges of the Iraq Special Tribunal, as well as an assortment of administrative staff, due to their former membership of the Ba'ath Party which is listed as a disqualification for service in the IST statute.

3. (S) In practice, this requirement has been disregarded. Ba'ath membership was required of all practicing judges under Saddam's regime; most IST judges, including IST Chief Investigative Judge Ra'ad, held the lowest level of party membership, which is not considered a disqualification in any other branch of Iraqi government. IST judges were interviewed and cleared for service by the De-Ba'athification Committee prior to their appointment to the Tribunal.

4. (S) NOTE: RCLO believes it unclear that the De-Ba'athification Committee is authorized to remove IST judges even should they be disqualified from service by former Ba'ath membership, given provisions in the TAL stating that the judiciary shall "in no way be administered by the executive authority" and that removal of a judge must be accomplished through a complex procedure initiated by the Higher Juridical Council. END NOTE

5. (S) More directly, the TAL states that the IST statute "exclusively defines" the IST's jurisdiction and procedures, notwithstanding any other part of the TAL, and provides that the judges of the IST "shall be appointed in accordance with the provisions of its founding statute". The TAL thus establishes the IST statute as the exclusive legal document governing the IST's judicial appointments and procedures. Post does not believe the CPA Order establishing the De-Ba'athification Committee should be read to trump the TAL. End note.)

6. (S) In conversations with DPM Chalabi and other senior IST leaders, Embassy noted that the abrupt and politicized removal of key IST judges, including Judge Ra'ad, would slow the course of upcoming trials and ongoing investigations, including the ad-Dujail case, and would likely result in the withdrawal of RCLO investigative, advisory, and administrative support.

7. (S) While no judges have yet been removed, it is unclear whether we have successfully dampened Chalabi's enthusiasm for tinkering with the court's makeup: on July 17, RCLO learned that the IST Administrative Director and other high-level non-judicial staff named in the letter had been removed. Other ITG officials continue to express unhappiness at the IST's pace, with PM aide Bashar al-Naher blaming an unlikely collusion

between Ba'athist IST judges and "the Americans" for preventing the timely appearance of Saddam and other former regime leaders at trial.

17. (S) Threats to the IST's independence may also come from the Transitional National Assembly, which plans on July 20 to debate legislation amending the IST's charter to bring the Tribunal under the control of the Iraqi Higher Juridical Council. Many IST judges feel - realistically or not - that any such move will result in the replacement of independent IST judges with hand-picked Chalabi supporters.

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HIGH-VALUE DETAINEE DISPOSITION  
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18. (S) Under the circumstances, RCLO continues to monitor the IST's bringing of charges against High-Value Detainees (HVDs) in MNF-I custody closely. Using new evidence, the IST has provided reasonable grounds on which to proceed with investigative hearings on several HVDs previously approved by MNF-I for release (see reftel); in several other cases, RCLO expects the IST to vacate arrest warrants issued in the panic caused by Embassy and MNF-I's June announcement of impending HVD releases.

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COMMENT  
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19. (S) DPM Chalabi has a complicated history with the IST, which was originally headed by his nephew, Salem Chalabi, before the younger Chalabi's August 2004 replacement following the issuance of an arrest warrant implicating him in murder. DPM Chalabi's ties to the Sadr Bureau may have created antipathy towards Judge Ra'ad, who issued the arrest warrant linking Moqtada al-Sadr with the killing of Abdul Majid al-Khoei. PM aide al-Naher's suggestion that the ITG might be satisfied with the removal of Judge Ra'ad alone (sparing the other twelve judges) may support to this conjecture.

10. (S) Moreover, ITG leadership is keenly aware of the optics involved in the public trial of Saddam and other former senior regime leaders, and seems frustrated at ITG inability to "manage" the IST's independent judicial processes. The referral of the ad-Dujail case may ease pressure on the IST temporarily, but executive and legislative attempts at interference and influence are likely to continue.  
Satterfield